



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13101541
[REDACTED]

[REDACTED],
Complainant,

v.

FRONTIER COMMUNICATIONS CORPORATION,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-2-4(c).

On October 17, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against Frontier Communications Corporation ("Respondent") alleging discrimination on the basis of disability and race in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]

Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

There are two issues pending before the Commission. The first issue is whether Complainant was subjected to an adverse employment action because of his race. In order to prevail on the basis of race, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees of a different race were treated more favorably.

By way of background, Complainant was hired on or about May 10, 2010 as a Sales and Service Technician II. At all times relevant to the Complaint, Complainant's duties included but were not limited to lifting, unloading from vehicles and carrying ladders weighing up to 70 pounds as well as to tasks that required Complainant to work aloft on ladders, in buckets, and on poles



with the use of climbing hooks. On or about July 23, 2013, Complainant injured his shoulder while pulling a drop cable across Indiana State Road 56. Pursuant to Respondent's policies and procedures, Complainant reported the accident, received emergency medical treatment, was diagnosed with "left shoulder strain," and placed on work restrictions prohibiting him from working with his left arm. Despite Respondent's admission that it assigned light duty work to a similarly-situated Caucasian Sales and Service Technician II (hereafter "Technician A") with a virtually identical work restriction prohibiting him from working with his right arm, Respondent refused to grant Complainant the same opportunity. Specifically, Respondent assigned Technician A to conduct DSL troubleshooting work that did not require lifting, perform light duty cleaning tasks that could be conducted with one arm, return phone calls, and complete paperwork as required. In short, Respondent created a position for Technician A; however, Respondent repeatedly denied Complainant's requests for light duty work, even after Complainant's work restrictions changed, permitting him from lifting up to 5 lbs with his left arm as long as it was not above waist level. All evidence suggests that Complainant was meeting Respondent's legitimate work expectations; however, Respondent never offered him a light duty work assignment. Respondent's disparate treatment toward Complainant is readily apparent; thus, there probable cause exists to believe that Respondent violated the applicable laws as alleged.

Similarly, the second issue before the Commission is whether Complainant was denied a reasonable accommodation. In order to prevail, Complainant must show that: (1) he has a condition that substantially limits one or more major life activities; (2) Respondent knew or should have known of Complainant's need for a reasonable accommodation; (3) an accommodation exists that would allow Complainant to perform the essential functions of his job; and (4) Respondent denied or unreasonably delayed Complainant's request for a reasonable accommodation.

It is evident that Complainant's injuries constitute a condition that substantially limits one or more major life activities; moreover, there is no question that Respondent was aware of Complainant's need for a reasonable accommodation as he continuously requested a light duty assignment in light of his work restrictions. However, Respondent denied Complainant's requests. As previously stated, Respondent created a position for Technician A who suffered a nearly identical injury to Complainant. Specifically, Respondent permitted Technician A to perform various light duty tasks during his convalescence. Nevertheless, Respondent now opines that it made a "bad choice" when it permitted Technician A to return to work. Regardless of Respondent's opinions regarding the validity of permitting another employee with impairment to return to work while denying Complainant's request, there is no question that an accommodation exists that would have permitted Complainant to return to work as such an accommodation was granted to Technician A. As such and based upon the aforementioned, probable cause exists to believe that Respondent violated the civil rights laws as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to

have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

April 15, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission